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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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MANELLI DENISON & SELTER
2000 M STREET NW SUITE 700
WASHINGTON, DC 20036-3307

EXAMINER

KALAFUT, STEPHEN J

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/501,622

Applicant(s)

MILLS, RANDELL L.

Examiner

Stephen J. Kalafut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2005 and 23 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-265 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-265 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>(2 dates)</u> . | 6) <input type="checkbox"/> Other: _____ |

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 23 February 2006 has been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-265, for reasons of record, are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility. See paper no. 4, pages 2-4.

Claims 1-265, for reasons of record, are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. See paper no. 4, pages 4-9.

Applicant's arguments filed 26 July 2005 have been fully considered but they are not persuasive.

Applicant argues (page 21) that the office has not identified a single physical law that has been violated. The alleged transition of hydrogen to a state lower than the principal quantum

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number equaling 1 (the “ground state”) would be such a violation, because the “ground state” is the minimum amount of energy which can be exhibited by the electron of a hydrogen atom. This is shown by Krieg, cited on page 12 of the IDS of 26 July 2005. Applicant’s alleged “new ground state”, where the orbital speed of the electron is limited by the speed of light, is based on Lorenz contraction, which can only occur in an inertial reference, *i.e.*, one which is not accelerating. An electron moving around an atomic nucleus, even if orbiting at a constant speed, is changing direction, and is therefore changing velocity, and thus undergoing acceleration. Since velocity is a vector quantity, a change to either its magnitude or to its direction constitutes acceleration.

Applicant argues (page 21) that the “Committee” has not found fault with his data on “legitimate scientific grounds”, but has only nitpicked on “theoretical grounds”. This is not persuasive because theoretical grounds are not distinct from scientific grounds, but are a subset thereof, since theory is an aspect of science.

Applicant argues (page 22) that he does not need to understand the theoretical basis for his invention. This does not mean that an applicant is free to put forth any theory he wishes. Any theory alleged by an applicant (not just the present applicant, but any applicant) has to make sense according to accepted scientific principles.

Applicant argues (starting on page 58) that independent third parties have generated data supporting his alleged lower states of hydrogen. This is not persuasive for reasons set forth in the attached Appendix, pages 1-41. Moreover, some of the articles cited in the IDS not only do not support applicant’s theory, but also find drawbacks to it. For example, Cvetanovic *et al.* (cited on page 4 of the IDS of 26 July 2005), on page 7, list several “experimental facts” which

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cannot be explained by applicant's alleged mechanism for Balmer line broadening, called the "resonance transfer model", abbreviated as "RTM". The article entitled "Attempt to Observe Excess Heat in a Ni-H₂O-K₂CO₃ Electrolysis System" (cited on page 12 of the IDS) concluded with "Our Mills experiment showed no detectable sign of excess heat." Rathke, in "A Critical Analysis of the Hydrino Model" (cited on page 12 of the IDS), finds applicant's theory ("CQM") "mathematically inconsistent in several points" (page 5, first full ppg.), and recommends that experimental evidence put forth in favor of the existence of hydrinos should be reconsidered for interpretation in terms of conventional physics" (page 6, just above the footnotes). According to Barth, in "Bigger Than Fire?" (cited on page 11 of the IDS), applicant overlooks the electromagnetic attraction between the nucleus and the electron, and does not use Planck's constant (starting at page 42, right column).

Applicant alleges a conflict of interest on the part of Dr. Bernard Souw, who has authored Appendices, and has been consulted during the examination of the present application, since Dr. Souw's consulting firm, BMS, would be a competitor of applicant's company, Blacklight. Applicant only shows that BMS has done consulting work in two fields in which applicant believes his invention to be applicable. However, these fields are microwave plasmas and CVD analysis, which do not necessarily require the use of hydrinos, while applicant's invention (in the present application) deals with doped semiconductors and methods of their manufacture, in which the dopant is an alleged "increased binding energy hydrogen compound", which is not claimed in any relation to microwave plasmas or CVD. Even if these were competing fields, Dr. Souw would have the option of either withdrawing from working on the present application, or refraining from working on the competing subject matter outside of the PTO.

Applicant argues (page 124) that the "Secret Committee" has ignored "most of Applicant's scientific evidence." In paper no. 36, pages 2 and 3, the office has identified the differences in the energy levels predicted by applicant's theory, and found that they do not correspond to some of the values shown by applicant's experiment. Neither pointing out this inconsistency, nor being unpersuaded by the evidence constitutes an act of ignoring the evidence. While applicant argues that there is no requirement that each catalyst exhibit all of the possible lower energy states, the data accounts for some energy transitions that are not predicted at all by applicant's own formula.

Applicant argues (pages 129-130) that the Examiner's calculations do not take into account the catalyst enthalpy. This is not persuasive because in order for a certain level of energy to be transferred from one species to another, both must be able to accommodate, either giving or receiving, that particular amount. The hydrogen atom, as postulated by applicant, can only release energy in certain amounts, expressed as values of "q", some of which do not correspond to the data offered by applicant.

Applicant argues (page 126) that many of his cited articles "have in fact passed the peer-review process" (emphasis applicant's). The fact that some may have passed this process does not nullify the fact that others have not. The failure to pass or undergo peer review is only one of several reasons why applicant's evidence is unpersuasive.

Applicant insists (page 161) that attachments A through R relate to issues relate directly to issues involving the improper examination of this application and the defective nature of the rejections issued in this case. None of these attachments contain data relating to the scientific merits of the present invention. Applicant has made numerous references to a Dr. Robert Park,

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whom he alleges to have had contact with a "Deep Throat" in the Office (page 31), and to have had "direct involvement in Blacklight's patent affairs" (page 32), "Blacklight" being the name of applicant's business. While applicant argues (page 24) that "the PTO rationalized its withdrawal of Blacklight's five allowed patent applications, in part, by citing a January 12, 2000 article written by Dr. Robert Park", citing a published article hardly constitutes contact with the author (which is also the case with Dr. Peter Zimmerman, whose article is cited on page of the IDS of 26 July 2005). The reference to the present applicant in the article does not mean that Dr. Park had obtained confidential information from the Office, because applicant published an edition of his book, *The Grand Unified Theory Of Classical Quantum Mechanics*, in January 2000. While applicant argues (page 32) that Dr. Park knew about several of applicant's applications, the knowledge of which "is supposedly kept confidential", the Washington Post article by Dr. Park which refers to applicant's patent and a second application set to issue two weeks thereafter was published on 18 August 2000, which was three days after the publication of the U. S. District Court decision (part of Attachment K) which referred in which these applications were mentioned (page 1 thereof). Thus, both articles written by Dr. Park appear to be based on information that was already public at the two respective times that the articles were published. No "Deep Throat" or other improper contact would have been necessary.

Regarding the attachments 58, 60, 77, 80, 81, 88, 94, 96-98 and 100-114, submitted with the IDS of 26 July 2005:

Attachments 102, 103, 105-109 and 111-113 would fall into category (1), as set out in paper no. 20050109, because they have not been peer reviewed.

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Attachments 98, 101, 103, 104, 108-112 and 114 would fall into category (4), as set out in paper no. 20050109 because they contain data that cannot be accounted for by applicant's theory.

Attachments 100, 102, 103, 105-109, 111, 113 and 114 would fall into category (5), as set out in paper no. 20050103, because they speculate hydrino formation as an explanation for data not necessarily caused thereby.

Attachments 58, 60, 77, 80, 81, 88, 94, 96 and 97 have been addressed in paper no. 20050109.

Regarding the attachments 74, 80, 94, 96, 100, 110 and 113, submitted with the IDS of 23 February 2006, all are duplicate cites of attachments which have been addressed either above or in paper no. 20050109.

Please see also the Appendix attached to the present office action.

This is a RCE of applicant's earlier Application No. 09/501,622. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sjk


STEPHEN KALAFUT
PRIMARY EXAMINER
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